

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LANE C. HURLEY,

Petitioner,

v.

BRIAN THOMPSON, SUPERINTENDENT,
STATE CORRECTIONAL INSTITUTION,
--MERCER, PA,

Respondents.

3:13-CV-1502
(JUDGE MARIANI)

FILED
SCRANTON

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PER Gar
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ORDER

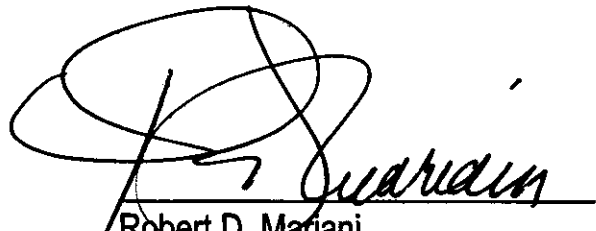
AND NOW, THIS 13th DAY OF NOVEMBER, 2017, upon *de novo* review of
Magistrate Judge Carlson's Report & Recommendation (Doc. 40), Plaintiffs' Objections
thereto (Doc. 44), **IT IS HEREBY ORDERED THAT:**

1. The Report & Recommendation ("R&R"), (Doc. 40), is **ADOPTED** for the reasons discussed therein.
2. Plaintiffs' Objections, (Doc. 44), are **OVERRULED**.
3. Based on the reasons stated in the accompanying opinion and in the R&R, the Court **DENIES** Hurley's petition for writ of habeas corpus. However, the Court notes that Plaintiff's Objections present a serious question of sufficiency of the evidence pursuant to *Jackson v. Virginia*, 443 U.S. 307 (1979).
4. Pursuant to Local Appellate Rule 22.2 of the Rules of the United States Court of Appeals for the Third Circuit, at the time a final order denying a petition under 28

U.S.C. § 2254, the Court must make a determination as to whether a certificate of appealability should issue. 3d Cir. L.A.R. 22.2.

5. For reasons stated in the accompanying opinion, this Court concludes that Petitioner's argument for insufficiency of the evidence has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Thus, the Court **ISSUES** a Certificate of Appealability on the issue of sufficiency of the evidence as stated below:

The issue certified for appeal is whether a conviction in which the *only* direct evidence at trial originated from repressed memory testimony of the victim may be constitutionally sufficient, when a growing body of academic literature has criticized repressed memory recovery as prone to the creation of false memories. The Certificate of Appealability is denied in all other respects.



Robert D. Mariani
United States District Judge